

**California Department of Transportation
Native American Advisory Committee
Quarterly Meeting Minutes
April 5, 2006**

Chairman Joseph Myers called the meeting to order at 9:15 a.m.

Blessing: Member Joe Loya led the Blessing.

Adopt Agenda: The Native American Advisory Committee (Committee) passed the agenda with no changes or additions.

Approve Minutes: Minutes of the January 11, 2006 meeting were approved. Motion by Garth Sundberg; seconded by Richard Warner.

Welcome and Introduction: Chairman Myers welcomed everyone to the meeting.

Roll Call: Committee members in attendance were: Bo Mazzetti, Joseph Myers, Dave Nenna, Garth Sundberg, Kathy Wallace, Richard Warner, and Joe Loya.

Director's Representatives in attendance were: R. Gregg Albright, Deputy Director, Planning and Modal Programs; Sharon Scherzinger, Acting Division Chief, Division of Transportation Planning; Garth Hopkins, Acting Office Chief, Office of Regional and Interagency Planning; Cynthia Gomez, Branch Chief, Native American Liaison Branch.

Others in Attendance: Dean Rising, Elk Valley Rancheria; Lisa Cathcart-Randall, Federal Highway Administration (FHWA); Robert Sparrow, FHWA; Russell Garcia, FHWA; Jo Sanford, Caltrans District 8; Bill Goodwin, Round Valley Indian Tribes; Blesilda Gebreyesus, Caltrans District 4; Kathleen Sartorius, Caltrans District 1; Tina Biorn, Caltrans; Greg King, Caltrans; Olivia Fonseca, Caltrans Civil Rights; Sandra Rivera, Caltrans District 2; Cassandra Hensher, Caltrans District 2 Coordinator; Kathleen McClafflin, Caltrans District 10; Jane Perez, Caltrans District 10; Richard Olson, Caltrans District 3 Coordinator; Marta Frausto, Caltrans District 6; Joan Sollenberger, Business Transportation and Housing (BTH) Agency; Warren Tamerius, Hoopa Valley Tribe; Armida Rosalez, Enterprise Rancheria; Frank Ramirez, Elem Indian Colony; Carolyn Yee, Caltrans Native American Liaison; Valarie Smith, Caltrans; Native American Liaison; Jila Priebe, Caltrans Native American Liaison.

NEW BUSINESS

Introduction and Welcome Caltrans new Deputy Director R. Gregg Albright: Chairman Myers introduced and welcomed the newly appointed Deputy Director of Planning & Modal Program, Mr. Gregg Albright to the Committee. Mr. Albright expressed his appreciation to be part of the NAAC and stated that he is very happy to be here and very excited to create a better working relationship between Caltrans and Tribes.

SAFETEA-LU: Environmental Planning Outreach Presentation: Ms. Lisa Cathcart-Randall gave an overview of the new transportation bill, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). She mentioned that new sections have been added to the bill, which emphasizes Tribes participation in the planning process. Sections 6001 and 6002 emphasize the involvement and consultation with the Tribes in the planning process. She stated that under the National Environmental Protection Act (NEPA) responsibilities of consultation still lies with FHWA, regardless of the Programmatic Agreement between Caltrans and FHWA. However, if Tribes believe that Caltrans is not in compliance, then FHWA can be notified for assistance and/or resolution.

Member Loya and Mazzetti expressed their concerns regarding the lack of monitoring the Metropolitan Planning Organizations (MPOs) responsibilities to work and consult with Tribes. Specifically, if a MPO does not want to work with Tribes in its region there is no clear sanction policy from the federal government to enforce the laws. Chairman Myers suggested the Committee make a recommendation to FHWA to take a closer look at existing policies and statutes regarding compliances of MPOs and involvement of Tribes in the planning process.

Ms. Cathcart-Randall responded that the planning process has not been followed consistently and FHWA is working to address everyone's concerns. One of FHWA's concerns is making sure Tribes are included at the table from the beginning of the planning process. She mentioned that if Tribe's concerns are not being heard or met then they could contact her directly.

Member Loya made a motion that the Committee advise the Director to take a closer look at the existing policies and statutes regarding the MPOs working relationship with Tribes, ensuring that Tribes are included early in the planning process. Member Mazzetti Second. Vote passed 7 Yes, 0 Against.

Indian Reservation Roads (IRR) Program Presentation: SAFETEA-LU New IRR Guidelines: Mr. Robert Sparrow gave a PowerPoint presentation explaining the most recent changes regarding the IRR program due to the new transportation bill SAFETEA-LU which was passed by Congress on July 29, and signed by the President on August 10, 2005. Throughout the presentation he mentioned the reauthorization of Highway Programs and the addition of a Tribal Transit Program. There are several new changes in this bill that impacts the IRR program: 1) Tribal governments can approve road and bridge construction plans, specifications and estimates (PS&E); 2) All transportation funds shall be made available on the request of the Tribal governments; 3) Under the road maintenance program a Tribe may now use up to twenty-five percent of its share of IRR Program funds for maintenance, which the BIA retains primary responsibility; 4) Under the direction of Congress, the Secretary of Interior, has to perform an inventory on IRR roads and report back to Congress in two years; and 5) Under the new Transit program Fiscal Year (FY) 2005-2009, the expanded funding for Non-urbanized Area Formula program, Section 5311 has increased from \$251 million dollars in FY 2005, to \$537 million dollars in FY 2009, and Tribes are now eligible as direct recipients.

Member Mazzetti informed the NAAC members that the twenty-five percent from the road maintenance program would develop like the previous Irrigation maintenance program in the 1970s, where the construction money was used for maintenance, taking away the irrigation construction funds until there was no longer a program. Taking away from the road construction funds for maintenance will make it difficult for Tribes to justify more construction funds in the future because the current formula requires that construction funds used in the previous year substantiate the construction funds needed for future years. If there weren't any construction costs (because they are used for maintenance), there would be fewer funds available for construction via the formula.

Mr. Sparrow concluded that his program will be conducting windshield inventories of the current Bureau of Indian Affairs (BIA) IRR road system, which he hopes to be completed by November 2006.

OLD BUSINESS

Indian Reservation Road (IRR) Program Coordinating Committee Update Report:

Member Mazzetti gave an update on the Coordinating Committee. He mentioned that in order for the BIA to accept a Tribe's plan they must have an accurate long-range transportation plan. The minimum requirement is a one-page cover sheet, one page identifying the roads, and authorization letter or resolution from the Tribe. Member Mazzetti also mentioned that the more information given to the BIA on the road system, the more the BIA could help. He also stated that the formula process does not work for California Tribes because the money BIA receives for planning is not enough to do adequate inventories or planning, which drives the distribution formula. He mentioned that he would keep the Committee updated regarding the Coordinating Committee's activities and meetings.

Follow Up (Final Comments) Directors Policy 19 "Working with Native American Communities": Ms. Cynthia Gomez informed the Committee that their packets included several copies of the Directors Policy #19 (DP-19). The first copy was the original DP-19, the second was the draft copy with NAAC Subcommittee revisions, and the last copy in the packets was the summary of all comments received from Department staff. Chairman Myers asked the Committee and attendees to review the draft copy for any additional comments and/or suggestions.

Chairman Myers explained the revised Policy and the changes. He asked the Committee to give their input.

Member Wallace and other attendees suggested the "Native American communities" be reinserted back into the content of draft revised Policy.

Member Mazzetti suggested that the Department's Policy should reflect the Department's government-to-government relationship with Tribal governments (federally recognized tribes), therefore, it is important to revise the Policy to address that concept. After a long discussion the Committee suggested that there could be two Policies.

Mr. Albright suggested that the Policy should address government-to-government relationships, and to make it more powerful, possibly prepare another Policy to define in greater detail other Tribal communities. Therefore, the suggestion was to have one Policy at the Director level and another at the Deputy Director. The Deputy Director Policy would address Department's relationship with non-federally recognized Tribes.

Chairman Myers asked Ms. Tina Biorn to draft a Deputy Director Policy to address the Department's relationship with non-federally recognized Tribes, to reflect the protection of cultural resources, and to identify Tribal communities.

Chairman Myers stated the Subcommittee would meet again to discuss comments received by the Committee. The Subcommittee will provide another revision of the Policy at the next Committee meeting. The NALB will organize the meeting for the Policy Subcommittee.

Follow up: Tribal Employment Rights Ordinance (TERO): Ms. Olivia Fonseca gave a follow up regarding the TERO policy. Ms. Fonseca referred to number twenty-four on the TERO meeting matrix, which was efficiency. She mentioned efficiency was the central point to funnel issues to Caltrans ensuring communication with the Tribes have occurred. She also informed the Committee that TERO cannot be applied on state contracts, but her office will still be working with Legal on a case-by-case basis.

Mr. Albright mentioned that this issue is clearly not over; however, we are locked in the Legal opinion until another law is implemented to solve this issue.

Member Mazzetti mentioned that the best way for Caltrans to communicate with Tribal Governments is through consultation, requiring one to review the applicable history for that Tribe. Legal needs to consider the unique sovereignty that Tribal governments have within their respective boundaries. He mentioned the recent California Attorney General's opinion issued on February 8, 2006 recognized Tribal sovereign authority within the boundaries of their respective reservation boundaries. He also stated that federal Indian law is a specialized area, requiring years of experience and education to understand its complexity. It was his belief and concern, that Legal could not provide an objective opinion because they do not have the experience or educational background in federal Indian law to make an unbiased, accurate opinion. Member Mazzetti made a recommendation that a resolution be passed to make a recommendation to the Director that as an interim solution, that TERO be applied within the reservations or rancherias boundaries with those Tribes who have TERO. Seconded by Member Loya. 7 Yes, 0 Against, motion carried.

Legislative Report: Ms. Gomez pointed out to the Committee that their packets included information regarding new and upcoming legislative information. She specifically mentioned Assembly Bill (AB) 2641 which was introduced by Ducheny regarding the protection of gravesites. AB 2762 and Senate Bill (SB) 1362 were also in the packet for review. AB 2762 is the bill supported by SCAG to include the 16 Tribal

Governments in the SCAG region to participate on the MPO's board. Member Joe Loya has been working with SCAG to promote this effort. SB 1362 is a bill under the California Environmental Quality Act (CEQA), that would require lead agencies to consult with, or provide adequate notice to Native American tribes identified by the California Native American Heritage Commission prior to certification or adoption of an environmental impact report, negative declaration, or exemption for a project.

Highway Landscaping Subcommittee Report: Member Kathy Wallace presented the latest draft of the Landscape guidebook. She mentioned that two major pages are missing due to technical issues. The Subcommittee is working to have an electronic copy of the guidebook online. Member Wallace asked the Committee to look over the guidebook and recommend changes that should be made.

Member Mazzetti recommended that the guidebook serve as an interim guide. Member Dave Nenna made a second to the motion. 7 Yes, 0 Against, motion carried.

Announcements: None

Adjournment: Meeting was adjourned at 3:06 p.m.